
Kluwer Arbitration Blog

Arbitrator Intelligence: The Pilot Project and Beyond

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On January 14, the Pilot Project for *Arbitrator Intelligence*—whose launch was first announced [here](#) on the Kluwer Blog—came to an official close. We could not be more pleased with the Pilot results, which we will share with readers below. But first, a bit of background about the methodology behind the Pilot.

The Pilot's purpose was to jumpstart *Arbitrator Intelligence*. The larger aim of *Arbitrator Intelligence*—to promote transparency, fairness, and accountability in the selection of international arbitrators—is an enormous undertaking. So we had to start somewhere. We decided to begin by collecting arbitral awards. Specifically, for the Pilot we aimed to collect at least 100 previously unpublished awards, and overall as many awards as possible.

Why start with arbitral awards? First, parties and counsel have overwhelmingly reported to us prior awards made by prospective arbitrators would always be welcome data points. More information to evaluate prospective arbitrators is always better, they say.

Second, awards are historical documents not only about cases, but about arbitrators. An award deals with a completely different dispute, but it is nevertheless rich in detail about an arbitrator's actual past experience, decision-making, and work product. What standard did the prior award use in granting or denying interim relief? How extensive or limited was witness testimony at hearings or document production? Was proposed consolidation permitted or prohibited? Was the contract language strictly interpreted, or did the equities of the situation seem to influence the tribunal's analysis? How long did it take the award to be rendered after the final substantive submissions were filed?

These are precisely the kinds of questions that parties are interested in when seeking to appoint arbitrators. And answers to these questions are often at least partially discernable from awards. But parties and counsel draw details about an arbitrator from a range of sources—inevitably of varying reliability—in an attempt to understand that arbitrator's suitability for the current dispute.

There are obvious limitations to what may be reasonably inferred about an individual arbitrator from a past award, particularly if decided by a tripartite tribunal. Arbitral awards are not crystal balls. They cannot accurately predict how arbitrators will decide these issues in future cases. And it is natural that arbitrators want to avoid being misunderstood or pigeonholed because of specific past cases.

A few have attempted to go one step further arguing that these limitations are reason not to even collect awards at all. As far as we know, however, that view has been publicly expressed only by a small handful of arbitrators. Instead, our overall sense from the Pilot is that most arbitrators are proud of the awards they render, understand why they might be of interest in the arbitrator selection process, and trust that parties and counsel are aware of the limitations described above.

Prior awards are simply another source of information about arbitrators. They are a unique source, however. Unlike reports from practitioners, the information in arbitral awards is unfiltered by subjective interpretation and personal memory. In this respect, awards can provide interesting, and otherwise unavailable, bits of information to enhance the mosaic that counsel and parties create about prospective arbitrators during the selection process.

Having decided to start with awards, we wanted to use a means of collecting them that would embody the nature and purpose of *Arbitrator Intelligence* itself. *Arbitrator Intelligence* is often referred to as a “database.” But that is not quite right. To the extent there is a technological analogy, *Arbitrator Intelligence* is more like a form of interactive, online crowd-sourcing than a database passively accessed by users. Ultimately, *Arbitrator Intelligence* aims to have Members themselves help build a collective resource that can then harness the benefits (in the longer term) that modern informatics can bring to strategic decision-making about arbitrator selection.

With these general goals in mind, we developed a website that would facilitate crowd-sourcing our award-collection efforts for the Pilot. The centerpiece of this website is an interactive map that indicates court cases in various jurisdictions around the world in which arbitral awards were sought to be annulled or recognized or enforced. All these court files are believed to contain arbitral awards. We then made a general plea to Members and supporters to help us find those awards, to add new court cases to the interactive map, and to submit awards from other sources.

The turnout has been overwhelming! In under four months, we accomplished our self-imposed goal of collecting in excess of 100 previously unpublished international arbitration awards. The award bringing us over the top was *Torno/Yönta? Ortak Giri?imi v. Istanbul Büyük?ehir Belediyesi Su ve Kanalizasyon Genel Müdürlü?ü (?SK?)*, a Turkish Award submitted by *Arbitrator Intelligence* Member Inan ULUC.

We have learned a lot during the Pilot. For example, in many countries such as Belgium, Georgia, and Russia (and apparently soon Germany), some awards are inaccessible due to national and local rules precluding public access to court files. Also, in some places (such as New Zealand), the parties must give explicit consent before an award may be released. At the same time, other jurisdictions (particularly in Latin America) have recently computerized their judicial case management systems so that theoretically awards could be remotely accessed from those files. We hope to use what we have learned and accomplished so far to build our community further and collect the potentially thousands of more awards that are in court files around the world.

Now for the specific outcomes from the Pilot. From 22 September 2014 through 14 January 2015, we collected 104 unpublished awards as part of an estimated 600 total awards (we have a backlog of awards yet to be certified, so we can’t give an exact number yet). Additionally, we collected new information about 50 confirmation/annulment-related court cases that have been added to the pre-existing 847 cases on our interactive map. We amassed a community of nearly 400 Members from 59 different jurisdictions. People from 103 countries viewed the *Arbitrator Intelligence* site over 4500 times, with the most active jurisdictions being (in descending order) United States,

United Kingdom, France, New Zealand, Germany, Russia, Italy, Brazil, Belgium, and Switzerland. Visits to the site supplemented personal emails of support and awards contributed separately.

We couldn't have achieved success on the Pilot without the *Arbitrator Intelligence* community, which worked creatively and enthusiastically to help us meet our goals. In addition to the Members who contributed awards, cases, stories, and feedback, an expanding number of Special Advisers and Supporters (listed [here](#)) provided crucial guidance and ideas, Prizes, funding, administrative support, and PR.

A few supporters deserve special mention. Gwen de Vries of Kluwer, Professor Chris Drahozal, and Gary Born of WilmerHale have provided essential practical and conceptual advice from the very first stages of development. We also must specially acknowledge the extraordinary and extraordinarily generous pro bono legal support from Alston & Bird and GleissLutz. And for all of you wondering who put together the sleek web design, that was Concepcion Design.

As noted at the beginning of this post, the Pilot was only the beginning. As for next steps, *Arbitrator Intelligence* will move beyond arbitral awards. Ultimately, *Arbitrator Intelligence* aims to develop a survey to collect feedback from users in individual cases. To that end, we will be developing another online interactive tool through which members of the international arbitration community can contribute *their ideas* about how to frame the structure of the survey, how to formulate its questions, and how best to distribute the survey and collect its results.

So stay tuned! And in the meantime, please keep those awards coming!

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